

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 7174**

**BILL NUMBER:** HB 1655

**NOTE PREPARED:** Mar 4, 2003

**BILL AMENDED:** Mar 3, 2003

**SUBJECT:** Financial institutions.

**FIRST AUTHOR:** Rep. Bardon

**FIRST SPONSOR:**

**BILL STATUS:** 2<sup>nd</sup> Reading - 1<sup>st</sup> House

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill restricts certain lending acts and practices. The bill establishes the Mortgage Fraud Unit (Unit) under the Mortgage Fraud Unit (Unit). The bill provides procedures to the AG and prosecuting attorneys for civil and criminal enforcement actions. The bill increases the bond required for loan brokers to seventy-five thousand dollars. The bill increases mortgage recording and loan broker registration and renewal fees. The bill requires the Housing Finance Authority (HFA) to provide mortgage literacy training programs. The bill allocates increased revenue to the HFA, the Unit, and the Securities Division of the Secretary of State (SOS). The bill provides procedures in the event of partial federal preclusion or preemption. The bill appropriates seventy-five thousand dollars to the Legislative Council from revenues credited to the Unit to contract a study of predatory lending and the high rate of foreclosure in Indiana with an independent organization. The bill provides for the creation of the Interim Study Committee on Mortgage Lending Policies. The bill makes technical corrections affecting industrial loan and investment companies.

**Effective Date:** (Amended) Upon Passage; July 1, 2003; January 1, 2006.

**Explanation of State Expenditures:** (Revised) *Mortgage Fraud Unit* - This bill establishes the Mortgage Fraud Unit, which would be administered by the AG. The Unit would be required to cooperate with, and the AG would be allowed to file complaints with, the Professional Licensing Agency, Department of Financial Institutions, Department of Insurance, Securities Division of the Secretary of State, and the Supreme Court Disciplinary Commission in order to implement the Unit's responsibilities. The Unit would also be required to cooperate with these agencies in order to implement and maintain an education program which, is intended to inform mortgage loan consumers of lending fraud.

The Unit may require two Deputy Counsels (PAT 1) and one law clerk (PAT VI). The estimated direct and indirect cost of these three positions is \$136,310 in FY 2004 and \$136,150 in FY 2005. The bill provides for the Unit to be funded with various fee revenues (see Explanation of State Revenues). The funds and resources required could also be supplied through a variety of other sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Office of the Attorney General has 278 authorized full-time positions. As of January 6, 2003, there were 58 full-time positions vacant. The Office of the Attorney General reverted just under \$4,000 from its operating account at the end of FY 2002. Ultimately, the source of funds and resources required to satisfy the requirements of this bill would depend upon legislative and administrative actions.

***Foreclosure Study-*** The bill appropriates to the Legislative Council \$75,000 from fee revenue credited for the Mortgage Fraud Unit for the purpose to contract with an independent organization to conduct a study on predatory lending and the causes of the high rate of foreclosure in Indiana during 2001, 2002 and 2003. The appropriation would be effective in FY 2005. The money appropriated would not revert to the state General Fund at the end of a given fiscal year. The expenditure required for the study would be funded from revenue generated from the increased fees provided under the bill. The study results must be reported in writing to the Legislative Council no later than December 31, 2005.

***Interim Study Committee on Mortgage Lending Policies (ISCMLP)-*** The bill establishes the ISCMLP to study mortgage foreclosure and predatory lending. The Committee would be governed by the policies established by the Legislative Council regarding interim study commissions and committees. Under current Legislative Council resolution, state expenditures could range from \$6,000 to \$12,000 per state fiscal year to fund the ISCMLP, depending on the membership level. The expenditures required for the Committee would be paid from the Legislative Services Agency budget. The interim committee would not be established until after January 1, 2006 and would expire by December 31, 2006.

**Explanation of State Revenues:** (Revised) ***Mortgage Fraud Unit -*** The bill raises a county recorder's fee for recording a mortgage by \$3, of which the recorder would retain \$0.50. The HFA would receive \$1.50 of the additional fee which would be used to identify, promote, and fund mortgage literacy training and programs throughout the state. The remaining \$1.00 would be paid to the Unit.

According to the Department of Local Government Finance, approximately 200,000 parcels of land are sold or conveyed each year. Assuming that a majority of these filings, or 90%, have a mortgage associated with the parcels, the county recorder fee increase would generate \$90,000 for the recorder, \$270,000 for the HFA, and \$180,000 for the Unit. If only half of the filings, or 100,000, have a mortgage associated with the parcels, the fee increase would generate \$50,000 for the recorder, \$150,000 for the HFA, and \$100,000 for the Unit.

The bill also increases the fee for both initial and renewal license for loan brokers by \$100 to \$300. Loan broker licenses are valid for two years. Revenue from loan broker regulation is currently deposited into the Loan Broker Regulation Account (LBRA). In FY 2002, the LBRA received \$55,000 in revenue from loan broker licensing fees. Based on this amount, 275 loan brokers either applied for a license or renewed a license during FY 2002. If 275 loan brokers continue to pay renewal fees, the LBRA would see an increase in revenue of \$27,500 per year.

***Civil Penalty-*** Persons committing deceptive acts under this bill may be assessed not more than \$500 per act according to current law. If an injunction has been filed and violated, the person violating the injunction

would be required to pay a civil penalty not exceeding \$15,000. The bill also gives the Attorney General the option to bring an action of injunction against a violator of the bill. A court presiding over the action may impose a civil penalty of not more than \$2,000 per violation, and impose a maximum penalty of \$15,000 for violation of an injunction. Additionally, the court could order the violator to pay reasonable costs for the investigation and prosecution conducted by the AG.

***Criminal Penalty-*** A person knowingly or intentionally violating the bill commits a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** (Revised) ***Criminal Penalty-*** A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** (Revised) ***Mortgage Fraud Unit -*** County recorders' revenues would increase by \$0.50 per mortgage filing (see Explanation of State Revenues).

***Criminal Penalty-*** If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** Office of the Attorney General; Professional Licensing Agency and appropriate licensing boards; Department of Financial Institutions; Department of Insurance; Office of the Secretary of State, Securities Division; Indiana Supreme Court; Legislative Council; Legislative Services Agency.

**Local Agencies Affected:** County recorders, trial courts, local law enforcement agencies.

**Information Sources:** Department of Financial Institutions website: [www.in.gov/dfi/members/minutes](http://www.in.gov/dfi/members/minutes); State Budget Agency website: [www.in.gov/sba](http://www.in.gov/sba); State Staffing Table, January 6, 2003.

**Fiscal Analyst:** Chris Baker 232-9851